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INDIGENOUS ISSUES

Written statement submitted by the Women's International League for Peace and Freedom, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 February 1998]

Amendments to the draft declaration on the rights of indigenous peoples (III)*

Chapter III

Cultural and intellectual heritage

Article 12 (Amended version of article 12)

Indigenous peoples have the right and the **moral duty to preserve**, practise and revitalize their **cultural and intellectual heritage in its proper historical setting**.

By virtue of this right, indigenous communities have the authority to protect, uphold and foster the routine expression of their traditions, cultural values and past, present and future artistic creations such as archaeological and historical sites, ceremonies, **works of art and sculpture**, musical instruments, artifacts, designs and scientific knowledge, technological traditions, **visual** arts and literature **of universal value from the historical, aesthetic and anthropological viewpoint**.

Article 13 (Amended version of article 13)

In accordance with recognized human rights standards, indigenous peoples enjoy freedom of thought and conscience, by virtue of which they have a **collective** right to manifest, practise, develop and teach their spiritual traditions, customs and ceremonies and **the right to protect and have access to their holy and religious places, to use and keep** objects of worship, and to secure the repatriation of human remains **and other funerary articles**.

States shall take effective measures, **with the full consent of the peoples concerned**, to ensure and **guarantee respect and protection** for holy **and ritual** places, cemeteries in particular.

Article 14 (Amended version of article 14)

Indigenous peoples have the right to revitalize, use, **promote** and transmit to future generations their own histories, **community values**, philosophies, languages, writing systems and literatures, **and the right to preserve and assign names to their original communities, pay tribute to the memory of their martyrs and respect mythological sites**.

States shall undertake to adopt appropriate policies with a view to guaranteeing effective exercise of indigenous peoples' right to suitable protection of their cultural and intellectual heritage.

["... ensure that [indigenous peoples] can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation ...": as this relates closely to civil and political rights, we recommend its inclusion under Chapter VII.]

Article 15 (New provision)

Under the procedures laid down in international agreements, indigenous peoples have a right to the restitution and restoration of cultural, intellectual, religious and spiritual articles and property, including the remains of their ancestors of which they have been deprived without their full consent and in breach of their conventional laws, traditions and customs, and to fair compensation for irreparable physical and moral damage and injury.

Article 16 (New provision)

Indigenous peoples have a collective right to legal protection of their cultural and intellectual property and their folklore against any illegitimate use by national or international pirates, and against the imitation, deformation or debasement of the traditional indigenous artistic heritage.

Article 17 (New provision)

In conformity with the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Prejudicial Actions jointly adopted by UNESCO and WIPO, States recognize the traditional artistic heritage perpetuated by indigenous communities and all artistic works created in indigenous territories by unknown artists and handed down from generation to generation.

The legal protection stipulated in this Declaration shall apply to:

(a) verbal creations such as popular stories and legends, popular poetry and riddles;

(b) musical creations such as songs and popular instrumental music;

(c) physical creations such as folk dances and plays and ritual performances;

(d) tangible creations such as drawings, paintings, sculptures, pottery, woodwork and jewellery;

(e) musical instruments and works of architecture.

Article 18 (Amended version on medicinal plants; replaces article 24)

Indigenous peoples have the right to appropriate protection of plants, animals and minerals with medicinal properties widely used as ancestral remedies in traditional practice and medicine. They shall also have access without discrimination to all medical institutions, health services and medical care.

States are responsible for legally protecting the variability of living organisms used by indigenous peoples against illicit exploitation and use by transnational pharmaceutical corporations.

Article 19 (Amended version of article 29)

Indigenous peoples have a collective right to full recognition of their ownership, control and protection of their cultural and intellectual heritage.

Without prejudice to the provisions of international instruments, they have a right to a fair and equitable share in the proceeds from the exploitation for monetary or other gain of their human and genetic resources, seeds and medicinal plants, and indigenous knowledge of the properties of flora and fauna.

States shall in conformity with their respective legislation adopt environmental programmes and policies to guarantee the legal protection, control and sustainable development of indigenous peoples' scientific knowledge, environmental, genetic and cultural values, traditional technologies and innovations.

Chapter IV

Education and information

Article 20 (Amended version of article 15)

All indigenous peoples have a collective and individual right to free, complete and diversified education at all levels and in all forms of basic, secondary and higher education, in their own languages, including bilingual education. Indigenous peoples shall also have authority over policy formulation in their own educational systems and teaching institutions, and manage and administer the resources allocated to education for themselves.

States recognize education as their highest function and agree to orient teaching in all its forms towards the full flowering of the human personality, making available sufficient resources to carry out and apply the provisions of this Declaration.

Article 21 (New provision)

Indigenous children, including those living outside their communities, shall have free access to education and shall be at liberty to learn to read and write in their own mother tongue in accordance with their cultural traditions, values and methods.

States are under an obligation to provide history books and see to it that teaching materials provide a balanced and fair description of the historical truth about aboriginal civilizations.

Article 22 (New provision)

State education and vocational training programmes must be adapted to suit different social arrangements and help to foster traditional knowledge and technologies in order to secure the participation of indigenous peoples on an equal footing in the political, economic and cultural life of the national community.

Article 23 (Amended version of article 17)

Indigenous peoples have the right to establish their own information media in their own languages. They also have the right of equal access to all **existing** mass media, and the right to **set up radio and television networks in indigenous languages in order to inculcate in indigenous people a respect for their identity and promote bonds of friendship among different groups in society.**

States shall take appropriate steps to ensure that State-owned media duly reflect **multinational and multicultural** diversity.

Article 24 (Amended version of article 18)

Under the international agreements adopted by ILO, indigenous peoples have the right to pursue their physical well-being and spiritual development with dignity. Every indigenous person has the right to work without distinction or discrimination based on his identity, and the right to equal pay for equal work, to satisfactory health conditions and to social security.

States shall, in accordance with their labour legislation, take appropriate steps to guarantee effective protection in matters of hiring and working conditions, particularly legal protection for children against unlawful exploitation that might have harmful consequences for their health, education, and physical and mental development.

Note

* The beginning of this statement appears in documents NGO/31 and 32; it continues in documents NGO/34 and 35.

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INDIGENOUS ISSUES

Written statement submitted by North South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 February 1998]

GE.98-10759 (E)

Amendments to the draft declaration on the rights of indigenous peoples (IV*)

Chapter V

Participation by indigenous peoples

Article 25 (Amended version of article 19)

In accordance with international instruments, in particular the Declaration adopted at the World Conference on Human Rights in Vienna, indigenous peoples have a genuine right to participate fully at all levels of **the legislative and administrative** decision-making **process** in matters that may affect their rights, lives or destinies, through representatives freely chosen in accordance with their own procedures and institutions **of self-government**.

Article 26 (Amended version of article 22)

States **shall take suitable steps to** bring about an immediate, effective and lasting improvement in economic and social conditions, **especially** in employment, vocational training, housing, sanitation, health, **education** and social security.

Without prejudice to international cooperation, the State authorities shall devote priority attention to the vital needs of the aged, women, young people, children and the disabled.

Article 27 (Amended version of article 23)

By virtue of the principle of self-determination, indigenous peoples have **full authority freely** to determine and develop priorities and strategies for the **effective** exercise of the right to **sustainable** development and **the exploitation of their natural resources**.

Pursuant to the rules on self-government and self-management, aboriginal communities shall have the right and the power to draw up health, housing, education and environmental protection programmes and to undertake the administration of their assets and resources through their own institutions.

Chapter VI

Land, territory and resources

Article 28 (Amended version of article 25)

Indigenous peoples have the right to maintain and strengthen their physical and spiritual relationship of **respect and veneration** for their lands, territories and natural resources, **regarded since time immemorial as the founts of all life and elements of harmony and balance between man and nature.**

In accordance with this customary right, the lands, territories and natural and water resources traditionally possessed, occupied and used by indigenous populations are inalienable, indivisible and subject to neither prescription nor embargo.

Article 29 (Amended version of article 26)

All indigenous peoples have an original right of collective and individual ownership, possession and enjoyment of their lands and territories.

By virtue of that right, indigenous nations shall enjoy permanent sovereignty over their wealth and the renewable and non-renewable natural resources of the soil and the land beneath, coastal pools, marine ice, water resources, flora and fauna, mineral and forestry reserves, the water and the air, and shall enjoy the use thereof in consonance with their vision of the Universe and according to their physical and spiritual needs.

States agree to recognize indigenous laws, customs and usages, land-tenancy systems and institutions, and to pass effective legislation guaranteeing collective and communal ownership based on self-management [by indigenous people] of their own resources and protection against any illicit encroachment, invasion or usurpation of land and natural resources.

Article 30 (Reformulated version of article 27)

Indigenous peoples have the right to restitution of the lands, territory and natural resources which they have traditionally possessed and occupied or used but have been usurped or confiscated from them **under duress based on the doctrine of terra nullius, as "conquered or discovered" land.**

States shall establish appropriate procedures under their national legal systems to settle claims to land, life and dignity and to guarantee fair and equitable compensation for land, with the related assets and accessories, of which [indigenous peoples] have been plundered without their free consent.

The right to compensation shall extend to such damage and injury as has been suffered by farm land as a result of the use of contaminating products or inappropriate technologies. Except where the contending parties arrive at a fair settlement, compensation shall preferably be made by an award of suitable land of a quality and legal status equivalent to or better than those formerly owned.

Article 31 (Reformulated version of article 10)

Indigenous peoples shall not be forcibly removed from their **original** lands and territories. No relocation shall take place without the free and informed consent of the peoples concerned, **except where natural disasters or warfare threaten their lives and security. When the reasons for removal no longer obtain, States must guarantee their return to their original lands and communities, offering fair and equitable compensation to resettled families.**

Article 32 (New provision)

Except as otherwise decided or agreed among the parties concerned, the establishment by transnational corporations of companies or sleeping partnerships on indigenous land for the purpose of exploiting and despoiling their basic and strategic resources shall not be permitted. No one may arrogate ownership, possession or the enjoyment of land and natural resources belonging to indigenous peoples without their prior consent.

Article 33 (New provision on demilitarization)

States agree to prohibit the use of land, territory and natural resources belonging to indigenous peoples for military purposes, for the installation of armaments factories or for the storage of radioactive or toxic waste that might contaminate the environment and threaten the lives of the inhabitants.

Indigenous peoples reserve the right to institute legal proceedings for the purpose of protecting their lands and resources and securing the complete demilitarization of their territories.

Article 34 (New provision on the code of conduct for transnational corporations)

Work by transnational corporations on the execution of macro-economic, agro-industrial, mining and power-generation projects in indigenous territories must conform to such rules and conditions as are considered necessary by the peoples and nations of the host countries.

States are under an obligation to consult indigenous peoples and obtain their free consent before authorizing foreign investment or granting licences to transnational companies for the exploration or exploitation of basic natural resources that may worsen environmental degradation and increase the misery of the peoples affected.

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* The beginning of this statement appears in documents NGO/31, 32 and 33; it continues in document NGO/35.

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INDIGENOUS ISSUES

Written statement submitted by the Women's International Democratic Federation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 February 1998]

Amendments to the draft declaration on the rights of indigenous peoples (V*)

Chapter V

Civil and political rights

[It will be noted that articles 31 and 34, as amended, have been moved and regrouped under Chapter I, General principles, as articles 3 and 4.]

Article 35 (Amended version of article 5)

Every indigenous person has the right to **acquire his own nationality immediately after birth in accordance with the national legislation of the State concerned. No one shall be arbitrarily deprived of his nationality on grounds of race, religion or social origins.**

Article 36 (Amended version of article 32)

Indigenous peoples have a collective right to citizenship in accordance with their **institutions** and customs, **by virtue of which they shall be able effectively to exercise the political right to elect or be elected to State office - executive, legislative, judicial or administrative.** Indigenous nationality does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Article 37 (Amended version of article 4)

Indigenous peoples have a **collective** right to maintain and strengthen **the means of social production in which their political** and legal systems and their social and cultural characteristics **are rooted**, while **boosting their involvement** in the political, economic, social and cultural life of the **nation** State.

Article 38 (Reformulated version of article 33)

Indigenous peoples shall **enjoy a collective right** to promote, develop and **determine** the structure of their institutions and judicial procedures in accordance with **universally** recognized human rights standards.

States shall take steps to guarantee the effective exercise of political, economic and cultural rights so that:

(a) specific characteristics and customs and conventional standards are duly reflected in the legal system and political institutions of the State;

(b) ancestral life styles and communal working practices are taken into consideration in the design of sustainable development programmes.

Article 39 (Reformulated version of article 35)

Indigenous peoples established in different parts of the world and divided by frontiers created by colonialism are fully entitled to maintain and develop bonds of friendship and cooperative relations with all peoples in the economic and political fields and in cultural activities with a view to strengthening the communal spirit of fraternity, solidarity and mutual understanding.

States undertake to guarantee the exercise and application of that right within the framework of international cooperation.

Article 40 (Amended version of article 36)

Indigenous peoples have a legitimate right to the recognition, observance and enforcement of treaties, agreements and constructive arrangements concluded with States and their successors in accordance with their original spirit and intent.

States shall be under an obligation, in strict compliance with the undertakings they have entered into, to honour and respect such treaties, agreements and arrangements. Disputes to which no settlement can be found by peaceful means shall be submitted by the parties in dispute to the competent international bodies, including the International Court of Justice.

Note

* The beginning of this statement appears in documents NGO/31 to 34.

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RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Written statement submitted by Fraternité Notre Dame, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 February 1998]

Rights of persons who belong to minorities

1. Every man has a right to expect from any society, freedom of action, freedom of conscience, and the possibility for his individual and social being to open up, without being hindered by discrimination based on the fact that he belongs to a minority.

2. Every individual has a right to practise his traditions, as long as they do not infringe on other people's freedom and are not expressed in a protesting or violent spirit.

3. Every person must be able to live according to his cultural, social, ethnical or religious particularities, and no pressure coming from individuals or groups superior in number should be able to influence the proper exercise of these particular practices.

4. Nowadays, however, minorities are often confronted to a struggle which can even become extremely hard, to safeguard their identity. Fraternite Notre Dame often witnessed such fratricidal fights in the various countries where it has established its humanitarian missions. The historical times we are going through are especially marked by this lack of acknowledgement of minorities. Too great a number of minorities have to raise their voices in an urgent manner in order to prevent their disappearance.

5. Being able to maintain a tradition proper to one's country, one's ethnical group or one's belief, is not a privilege, but should be a fact acknowledged by, and accessible to all. Belonging to a national or religious culture and asserting it in society - such an assertion must take place in peace and mutual respect - even if it comes from a minority, is vital and should not even be a debating point. Every society lives on differences and is enriched by cultural, religious, racial or linguistic disparities of which it is constituted.